Boilermakers Local Lodge No. 40, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (Envirotech Corporation) ***and*** **Larry R. Whitt.** Case 9-CB-4867

March 7, 1983

DECISION AND ORDER

BY CHAIRMAN MILLER AND MEMBERS JENKINS AND HUNTER

On June 30, 1982, Administrative Law Judge James L. Rose issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and brief and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The facts of the case are essentially undisputed. During the fall of 1980, Charging Party Larry Whitt sought employment through Respondent's exclusive hiring hall as a construction boilermaker/welder. He was referred to a job at the Tennessee Valley Authority Paradise Steam Plant Project, on which Envirotech Corporation was the general contractor. He worked there from October 14 until December 19, 1980,[1] when the job was completed. In January, Whitt applied for additional work at Envirotech by speaking to its boilermaker superintendent, without the knowledge or approval of Respondent. On his employment application, he stated that he was applying for a position as a "boilermaker, welder," and he listed his three most recent jobs as involving welding. Whitt did not receive the job.

Thereafter, Whitt returned to the union hall seeking a referral. However, Dwain Smith, the dispatcher, told him that he was suspended from the hiring hall referral list for 90 days because he had sought work directly with an employer. Whitt immediately protested to Smith, but he did not invoke Respondent's procedure for appealing his suspension.

Whitt was punished pursuant to article 7 of Respondent's "Joint Referral Rules" which provides:

> Section 7.3
>
> Registrants shall be suspended from the out-of-work lists and therefore not referred for employment for a period of ninety (90) calendar days for any of the following reasons:
>
> * * * * *
>
> 17. Interference with proper administration of referral procedures.

As set out, *infra*, it is clear that employees in general and Whitt in particular were aware that hiring hall rules prohibited employees from attempting to obtain work through direct contacts with employers and that penalties could ensue from such attempts to circumvent the hiring hall.

The record indicates that Smith had heard a rumor that individuals were attempting to "steal" work rather than going through the hiring hall, and reported this to Business Manager Daniel Everett. Everett contacted Claude Meares, the labor relations manager for Envirotech, requesting verification of the rumor. Thereafter, Meares sent Everett a letter setting forth the facts regarding Whitt's attempts to gain employment and attached a copy of his written application.[2] Upon receiving this letter, Everett decided that Whitt should be suspended.

The Administrative Law Judge rejected the General Counsel's contention that Whitt had applied for a "white hat" job[3] rather than a boilermaker job and thus did not attempt to circumvent the hiring hall. He also rejected the General Counsel's contention that Respondent did not adequately investigate the incident prior to suspending Whitt, finding that Respondent reasonably relied on Meares' letter describing Whitt's conduct. Nevertheless, the Administrative Law Judge found that Respondent, by its suspension of Whitt, violated Section 8(b)(2) of the Act. He based this conclusion essentially upon two findings. First, he found that, although Whitt's conduct in seeking work at Envirotech was improper, Respondent unlawfully punished him by denying him employment opportunities. Second, the Administrative Law Judge found that Respondent should not have punished Whitt for violating the above rule because the rule was so vague as to give union officials discretion as to whether or not to enforce it in a particular case.

Respondent excepts to these findings and to the Administrative Law Judge's conclusion that it vio-

[1] All dates herein are between October 1980 and January 1981 unless otherwise indicated.

[2] The letter also indicated that two other individuals, who are not involved in the instant case, sought employment at Envirotech directly. These individuals were also suspended from the hiring hall referral list for 90 days.

[3] A "white hat" job is one which the Company may fill without resort to the hiring hall.

lated the Act. For the reasons stated below, we find Respondent's exceptions to be meritorious.

The Board will presume that a union acts illegally any time it prevents an employee from being hired or causes an employee to be discharged[4] because by such conduct a union demonstrates its power to affect the employee's livelihood in so dramatic a way as to encourage union membership among the employees. However, this presumption may be rebutted "where the facts show that the union action was necessary to the effective performance of its function of representing its constituency."[5] Thus, a union operating a hiring hall may lawfully refuse to refer an individual for hire for a period of time for quitting a previous job,[6] for excessive absenteeism,[7] or where the employee was also an employer.[8] In such circumstances, it is assumed that unions are not acting to encourage union membership, but for the legitimate purpose of promoting the efficiency and integrity of their hiring hall operations.

Similarly, it has long been held that a union may lawfully prevent the circumvention of a legitimate exclusive hiring hall.[9] Respondent herein suspended Whitt from its referral list in order to promote the legitimate union interest of ensuring a fair referral system. As a means of reducing the potential for abuse of its hiring hall by individuals such as Whitt, Respondent finds it necessary to strictly enforce its rule against direct contact with employers. We see no reason to second-guess this judgment. There is no evidence herein that Whitt was penalized to encourage him to join the Union[10] or for any other illegitimate reason, or that the hiring hall itself was not legitimate. Accordingly, we find that Respondent's action in disciplining Whitt was not improper.

We further find that the severity of the penalty does not render this action invalid. In finding that Whitt's suspension was an excessively harsh penalty, the Administrative Law Judge relied upon the Board's decisions in *Construction and General Laborers' Local Union No. 596 of the Laborers International Union of North America (Leo J. Hood Mason Contractors, Inc.)*, 216 NLRB 778 (1975), and *Local No. 96, Sheet Metal Workers International Association, AFL-CIO (Roland M. Cotton, Inc.)*, 222 NLRB 756 (1976). In those cases, unions sought the discharge of employees from the jobs which they obtained through direct contact with employers, and the Board approved the unions' conduct. In the instant case, the Administrative Law Judge suggests that such discipline—seeking to remove the employee from the job obtained through improper direct contact—is the maximum penalty that a union can properly impose. Thus, in the instant case, the Administrative Law Judge asserts that Respondent could have prevented Whitt from working for Envirotech, but it could not deny Whitt access to the hiring hall for referrals to other employers. We disagree. Since we find that Whitt's suspension was ordered for legitimate, nondiscriminatory reasons, we will not scrutinize the harshness of the penalty.[11] The Board's approval of the penalties imposed on employees in the above cases is not determinative of the penalty herein.[12]

Additionally, we disagree with the Administrative Law Judge's finding that section 7.3(7) of the Joint Referral Rules is so vague as to preclude its legitimate enforcement. The Administrative Law Judge acknowledged that Whitt knew "that he could not deal directly with employers for a boilermaker/welder job, and that there could be some kind of penalty if he did so." However, he found the rule to be overly vague because of his finding "[w]hat acts involve interference must be decided by someone."

The Joint Referral Rules are posted in the union hall and available to all employees that use Respondent's referral system. Although section 7.3(7) does not specify every possible example of "interference" with the hiring hall process, it was commonly known among employees, and specifically known by Whitt, that direct dealing with employers constituted an infraction. Thus, Whitt cannot complain that his suspension was an exercise by union officials of arbitrary authority, and we find that the rule was applied in a valid manner. As the

[4] *Local 873, International Brotherhood of Electrical Workers, AFL-CIO (Kokomo-Marian Division, Central Indiana Chapter, National Electrical Contractors Association, Inc.)*, 250 NLRB 928, fn. 3 (1980); *International Union of Operating Engineers, Local 18, AFL-CIO (Ohio Contractors Association)*, 204 NLRB 681 (1973), reversed on other grounds 496 F.2d 1308 (6th Cir. 1974).

[5] *Ohio Contractors Association, supra.*

[6] *International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 667, AFL-CIO (Union Boiler Company)*, 242 NLRB 1153 (1979).

[7] *Kokomo-Marian Division, Central Indiana Chapter, National Electrical Contractors Association, Inc., supra.*

[8] *Lower Ohio Valley District Council of Carpenters, Millwright Local No. 1080 (Commercial Contracting Corporation)*, 201 NLRB 882 (1973).

[9] See *International Alliance of Theatrical Stage Employees, Local No. 7 (Universal City Studios, Inc.)*, 254 NLRB 1139 (1981).

[10] The record indicates that he was not a union member.

[11] *N.L.R.B.* v. *Boeing Co., et al.*, 412 U.S. 67 (1973). In Member Hunter's view, the Board examines the harshness of a union penalty only in the context of making a determination as to whether the penalty was discriminatorily motivated. Once the Board determines that in fact the penalty was not discriminatorily motivated and thus was not violative of Sec. 8(b)(1)(A) of the Act, the severity of the penalty imposed becomes irrelevant. In the instant case, Member Hunter agrees with his colleagues that Whitt's suspension was ordered for legitimate, nondiscriminatory reasons, and therefore he finds that the severity of the penalty is irrelevant.

[12] The Administrative Law Judge found it significant that Whitt did not actually obtain a position at Envirotech, and therefore did not adversely affect the employment opportunities of anyone else. We find this inconsequential, since he was punished for attempting to circumvent the hiring hall, without regard to the success of his efforts.

record does not indicate that the rule existed for an unlawful purpose, we also find that it is not unlawful on its face.

The instant case is clearly distinguishable from *Union Boiler Company, supra,* cited by the Administrative Law Judge. In that case, the Board found a violation where a union suspended an employee from its referral list, ostensibly for violating a rule against quitting "shop jobs," because the Board concluded that the union rule was subject to arbitrary enforcement. However, the rule therein was not in writing and was not known generally among employees, including the punished employee.[13] Whitt, however, clearly committed a violation of a published, well-known union rule.

We find that Respondent's suspension of Whitt pursuant to section 7.3(7) of the Joint Referral Rules was neither a violation of its 8(b)(1)(A) duty of fair representation, nor a form of discrimination against him in violation of Section 8(b)(2). Accordingly, we shall order that the complaint be dismissed.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

[13] The union policy in that case was that an employee who quit a shop job would not be referred for a "reasonable" length of time. It was correctly held that this left the severity of the penalty to the whim of the union officer.

DECISION

STATEMENT OF THE CASE

JAMES L. ROSE, Administrative Law Judge: This matter was heard before me on April 29, 1982, at Bowling Green, Kentucky, upon the General Counsel's complaint which alleges that the Respondent labor organization engaged in violations of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, *et seq.*, by refusing to refer the Charging Party for employment with contractors with whom the Respondent had collective-bargaining agreements.

The Respondent generally denies that it has committed any violations of the Act. While admitting that the Charging Party was suspended for 90 days from its hiring hall, and as a result he was not referred to jobs, the Respondent contends that such is a permissible enforcement of the exclusive hiring hall inasmuch as the Charging Party had sought employment directly with a signatory contractor.

Upon the record as a whole, including my observation of the witnesses, briefs,[1] and arguments of counsel, I hereby make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. JURISDICTION

The Respondent, Boilermakers Local Lodge No. 40, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO (herein sometimes the Union), is a labor organization within the meaning of Section 2(5) of the Act. In the representation of its members, it negotiates collective-bargaining agreements with employers engaged in interstate commerce concerning wages, hours, and other terms and conditions of employment.

One employer with whom the Respondent has a collective-bargaining agreement is Envirotech Corporation (also referred to in the record as Chemico), a Delaware corporation with an office and place of business in Drakesboro, Kentucky. It is engaged as a general contractor in the building and construction industry. In the 12 months preceding the date of the complaint herein, Envirotech Corporation purchased and received goods directly from points outside the State of Kentucky valued in excess of $50,000. Envirotech Corporation is admitted to be, and I find is, an employer engaged in interstate commerce within the meaning of Section 2(2), (6), and (7) of the Act.

Accordingly, I conclude that the National Labor Relations Board has jurisdiction under Section 10 of the Act to decide the issues raised by the complaint and enter any appropriate remedy.

II. THE ALLEGED UNFAIR LABOR PRACTICES

In the fall of 1980 Larry R. Whitt traveled from his home in West Virginia, to Kentucky, for the purpose of getting work as a construction welder, a trade he had pursued for 7 years or so. He went to the Union's office and applied to be referred for work as a construction boilermaker/welder.[2] He was referred to the Tennessee Valley Authority Paradise Steam Plant project on which Envirotech Corporation was the general contractor.

Whitt's first day of employment was October 14 and he worked steadily until December 19, at which time he was laid off because the job was completed.

Having become friends with the manager and other personnel of the Red Rooster Restaurant, a place frequented by TVA construction workers, Whitt stayed in the area and did odd jobs at the Red Rooster.

Shortly after Christmas, David Engler, the manager of the Red Rooster, introduced Whitt to Richard Arrington, Envirotech's job superintendent at the Paradise project. Engler had asked Arrington to help Whitt find a

[1] The Respondent's motion to file a reply brief is granted, and the brief considered.

[2] Under the Union's rules, not material here, to be a journeyman boilermaker requires having worked in the industry 8,000 hours. Nevertheless, one with fewer hours can be referred to particular jobs in the industry. Whitt was keeping a log of his hours and at the time of the events herein had approximately 3,600.

job and after a discussion between Arrington and Whitt, Arrington said he would keep him in mind. Both Whitt and Engler testified, however, that Whitt was not seeking employment from Arrington as a boilermaker or welder and that Arrington had told him that any job Whitt got directly would have to be a "white hat" or "company" job. They testified that Arrington said he could not hire Whitt directly as a boilermaker because the Company had an exclusive hiring hall arrangement with the Union.

Whitt acknowledged on examination that he understood this and that he understood it was against the rules for him to seek employment as a boilermaker directly with a contractor. He further acknowledged that he presumed there would be some penalty for doing it.

After meeting with Arrington, Whitt returned to his home in West Virginia for a few days and then came back to Kentucky on New Year's Eve (or New Year's Day). A few days thereafter, he went to the construction project and met Rod Carnahan, the individual to whom he had been referred by Arrington. (Carnahan was the boilermaker superintendent, according to the undenied testimony of Daniel Everett, the Union's business manager.) Whitt filled out an employment application in which, among other things, he stated that the position for which he was applying was "boilermaker, welder."

Whitt testified that he was told he would be called but he was not; thus he returned to the job in mid-January and again spoke to Carnahan, who in turn referred Whitt to an individual by the name of Gilstrap. According to Whitt, he was advised that the job would be essentially clerical and he would receive $5 per hour for 40 hours a week and there would be no overtime. While Whitt would be working with boilermakers and welders, according to his testimony, it was a "company job" and the $5 an hour was about half the prevailing rate for boilermakers/welders. For reasons unexplained in the record, Whitt was not hired.

A short time later, Whitt presented himself at the union hall for referral. He talked to the dispatcher, Dwain Smith, who told him that there were no jobs then available but that he would be notified. Then as Whitt was leaving, Smith called back to him and said to forget it, that he had been placed on a 90-day suspension from the hiring hall. There ensued a conversation the essence of which was that Whitt asked why and Smith told him that the Union had been advised that he had sought work as a boilermaker directly and that such is a violation of the hiring hall system meriting a 90-day suspension. Whitt said something to the effect that "it's not true" or "it's not fair." However, he did not attempt to appeal the suspension to the Union's business manager, which is provided for in article 4, Joint Referral Rules for Lodge No. 40. Whitt was shown a letter from Claude Meares, the labor relations manager for Chemico, that he and two others had sought employment directly. Attached to this letter was a copy of Whitt's application for employment.

Smith testified that Whitt's suspension came about because he had heard a rumor that some individuals were attempting to "steal work" rather than going through the hiring hall. He reported this to Everett who in turn contacted the Union's steward on the job. The job steward reported that he had heard those rumors and Everett then contacted Meares for verification. And Everett asked Meares to write him a letter setting forth the facts, which Meares did. Upon this letter, Everett made the decision that the three individuals involved, including Whitt, should be suspended for 90 days for "interference with proper administration of referral procedure," as provided in article 7 of the Joint Referral Rules for Lodge No. 40 and article VI of appendix "B" (the exclusive hiring hall) of the collective-bargaining agreement.

The parties stipulated that, but for his suspension, Whitt would have been referred to work after January 21, 1981.

Following the 90-day period, Whitt again returned to the union hall and made application for referral. At that time there were no jobs available but within 1 or 2 days there was work, and Whitt was referred.

III. ANALYSIS AND CONCLUDING FINDINGS

Although the language of the collective-bargaining agreement is not explicit, the parties agree that it is meant the Union would be the exclusive source of boilermakers for the signatory employers—that the Union operates an exclusive hiring hall.

Where a union has an agreement with employers to be the exclusive provider of employees, though potentially a source of disparate treatment among employees, such is nevertheless permissible. *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America [Los Angeles-Seattle Motor Express] v. N.L.R.B.*, 365 U.S. 667 (1961). To be lawful, however, operation of an exclusive hiring hall must use "objective criteria or standards for the referral of employees." *Local 394, Laborers International Union of North America, AFL-CIO (Building Contractors Association of New Jersey)*, 247 NLRB 97 (1980). Where the union does not have such objective criteria or does not follow the criteria it has, failure to refer is violative of Section 8(b)(1)(A) and (2) of the Act.

Since the paramount purpose of a hiring hall, from the employees' standpoint, is a fair and equal opportunity for employment in the jobs covered under the collective-bargaining agreement, it is not unlawful for the union, in its representation of all employees, to enforce the hiring hall. Thus, for instance, the union may seek the discharge of an employee who has obtained his job directly rather than through the hiring hall. *Construction and General Laborers' Local Union No. 596 of the Laborers International Union of North America (Leo J. Hood Mason Contractors, Inc.)*, 216 NLRB 778 (1975); *Local No. 96, Sheet Metal Workers International Association, AFL-CIO (Roland M. Cotton, Inc.)*, 222 NLRB 756 (1976).

The General Counsel does not contest these principles, but argues principally that under the facts of this case the 90-day suspension of Whitt was unreasonable because he in fact did not attempt to gain employment as a boilermaker but rather as some kind of a clerical employee; and/or the Union had other, less onerous, methods of enforcing its hiring hall.

The Union maintains that it has a "clearly stated" policy which "*require[s]* imposition of a ninety-day suspension for interference with the established referral procedures." (Original emphasis in the Respondent's brief.) The Union argues that it is well known to be interference with referral procedures for one to seek employment directly.

Whitt admitted to knowing that he could not get a boilermaker job without referral. Indeed the principal thrust of Whitt's testimony, and of the General Counsel's argument, is that he sought a "company job" and not work as a boilermaker.

On this point I find Whitt's testimony implausible, incredible, and not consistent with the documentary evidence. Although maintaining that he was looking for work as something other than a boilermaker, Whitt was referred to the boilermaker superintendent and filled out a job application in which he wrote as the position applied for, "boilermaker/welder." On the application he listed his three most recent jobs had been as a welder. It is just not believable that Carnahan interviewed Whitt for a job other than that of a boilermaker.

Whitt testified that Carnahan told him that he would be hired for some kind of a materials checker job at $5 an hour, and put him in contact with one Gilstrap so that this job could be explained. But Whitt never went to work. There is no explanation why he was not hired, if in fact Envirotech had work for Whitt in a nonboilermaker or a welder job. This gap in Whitt's testimony suggests that the Company did not, as he maintains, offer him a nonboilermaker job.

Further the Union could reasonably believe that Whitt solicited employment from Envirotech. According to the generally credible testimony of Everett, after hearing rumors that individuals were seeking employment directly, he contacted the Envirotech personnel manager for verification. Meares then wrote Everett stating that three individuals had in fact applied for jobs and attached Whitt's application. From these documents Everett reasonably could have concluded that Whitt in fact did seek employment directly.

The General Counsel nevertheless contends that Everett should have done more and should have investigated further once Whitt stated that it was not true. It is noted that, when Whitt was suspended, he was advised of the reason and at that time could have, had he so chosen, appealed the suspension to Everett, a right he is presumed to have known. Whitt did not do so. Thus I do not believe that the Union acted unreasonably in relying on the statements received from Envirotech concerning him and the two other employees.

But it does not follow that the rule is lawful or application of it as to Whitt met the minimum standards of fairness required by the Act. Although a union may enforce its exclusive hiring hall, to punish one by denying him employment opportunities because he has broken some rule is a different thing. In *Hood* and *Cotton* the offending employees were not punished. They were simply told they could not have the jobs they acquired in derogation of the hiring hall—that the job in question belonged to someone else. Though they lost jobs, to which they were not entitled under the hiring hall, their employment opportunity was not otherwise interfered with.

Here Whitt was punished and lost work for 90 days. Yet there is no showing that what he did affected the job opportunity of any one else. Nor did the Union persuasively show that punishment for contact with a prospective employer is necessary to protect the rights of others and the hiring hall. Seeking employment and actually being hired to the detriment of someone else are different matters.

Further, I conclude that the rule under which Whitt was denied employment for 90 days was so vague as to give union officials discretion whether or not to enforce it in a particular case. Though Whitt admitted knowing that he could not deal directly with employers for a boilermaker/welder job, and that there could be some kind of penalty if he did so, he could not have known from any document that doing so would mean his suspension for 90 days. Thus by refusing to refer Whitt for 90 days the Union failed to represent him fairly in violation of Section 8(b)(1)(A) and discriminated against him in violation of Section 8(b)(2). *International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Local 667, AFL-CIO (Union Boiler Company)*, 242 NLRB 1153 (1979).

Notwithstanding testimony that it is the custom that employees may not solicit employment directly, there is nothing in either the Joint Referral Rules or the collective-bargaining agreement prohibiting such. Indeed, the Joint Referral Rules provides that "Requests by contractors for key men to act as foremen shall be honored without regard to the requested man's place on the out-of-work list." If an employer may ask that a specific employee be referred, it follows that employees may make themselves known to the employers, by, for instance, soliciting an employer to make such a request.

Whether or not Whitt is sufficiently skilled to have been requested as a keyman is immaterial. If the referral system would seem to allow for some contact between workers and contractors, then necessarily whether one sought work directly in violation of custom would be a matter of judgment by the Union. If a rule, or combination of them, gives the Union discretion to punish one employee but not another then necessarily the one punished has been represented unfairly.

Further, the rule under which Whitt was suspended is an ambiguously worded catchall clause following enumeration of six specific causes for suspending one 90 days. Joseph Meredith, the Respondent's assistant director of the construction division, explained the necessity for the rule. He did not explain the necessity for not publicizing it specifically. If it is necessary to prohibit all employees from direct contact with employers, then the prohibition can be specifically worded.

The Respondent contends that "Section 7.3(7) of the Joint Referral Rules is not an unwritten policy vesting unfettered discretion in union officials with respect to the imposition of suspensions . . . ." This is so, the Union argues, because the rules require imposition of a 90-day suspension. Perhaps the punishment is specifically stated, but the crime is not. Clearly, what amounts to "interfer-

ence with proper administration of referral procedures" is not self-evident. What acts involve interference must be decided by someone. The power of union officials to pick and choose which acts are "interference" allows them to exercise arbitrary authority over employee's use of the referral system. Such power is proscribed by the Act.

Such was the basis of the Board's decision in *Union Boiler*. Although in *Roland M. Cotton* there was no publicized rule forbidding direct employment, such was implicit from the exclusive hiring hall agreement. Again the distinction between that case and this one (and *Union Boiler*) is that there the employee actually obtained work to the detriment of others on the out-of-work list. Here Whitt was punished. Here, in fact, the evidence is that Envirotech never hires boilermaker/welders directly and would not have hired Whitt.

I therefore conclude that, as applied to Larry Whitt, the Union so operated its exclusive hiring hall as to not represent him fairly in violation of Section 8(b)(1)(A) and discriminated against him in violation of Section 8(b)(2). I shall recommend that he be made whole for any loss employment he suffered while on suspension.

IV. THE REMEDY

Having found that the Respondent Union has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. I recommend that the Respondent make whole Larry R. Whitt for any loss of earnings he may have suffered by reason of its violation of its duty to represent him fairly, by payment to him of what he would have earned had he been referred on or after January 21, 1981. Backpay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), with interest as provided in *Florida Steel Corporation*, 231 NLRB 651 (1977).[3]

[Recommended Order omitted from publication.]

[3] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).